

Message Text

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16

ACTION EUR-25

INFO OCT-01 ADP-00 SSO-00 USIE-00 INRE-00 L-03 JUSE-00

TRSE-00 SEC-03 CIAE-00 INR-10 NSAE-00 RSC-01 SCA-01

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O 180630 Z MAY 73

FM AMEMBASSY BERN

TO SECSTATE WASHDC IMMEDIATE 7724

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DEPT FOR EUR/ CE SUTTERLIN; L MC DOWELL

PASS JUSTICE PETERSEN

PASS TREASURY MORGAN

PASS SEC POLLACK

E. O. 11652: N/ A

TAGS: EFIN, PFOR, US, SZ

SUBJ: JUDICIAL ASSISTANCE TREATY - ARTICLE 12

1. FOLLOWING IS AD REFERENDUM AGREEMENT TO AMEND PARAS 2 AND 3 OF ARTICLE 12. NO OTHER CHANGES THIS ARTICLE.

QUOTE

2. (A) WHERE THE PRESENCE OF REPRESENTATIVES OF AN AUTHORITY IN THE REQUESTING STATE AT THE EXECUTION OF A REQUEST IS REQUIRED BY ITS LAW IN ORDER TO OBTAIN ADMISSIBLE EVIDENCE, THE REQUESTED STATE SHALL PERMIT SUCH PRESENCE.

(B) WHERE THE REQUESTED STATE AGREES THAT THE COMPLEXITY OF THE MATTER INVOLVED OR OTHER SPECIAL FACTORS DESCRIBED IN THE REQUEST FOR ASSISTANCE INDICATE THAT SUCH PRESENCE IS LIKELY TO SUBSTANTIALLY FACILITATE A SUCCESSFUL PROSECUTION, IT SHALL ALSO PERMIT SUCH PRESENCE.

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(C) IN OTHER CASES THE REQUESTED STATE MAY ALSO
PERMIT SUCH PRESENCE UPON APPLICATION BY THE REQUESTING STATE.

(D) EXCEPT WHERE SUBPARAGRAPHS (A), (B) OR (C)
OF THIS PARAGRAPH OR SOME OTHER PROVISION OF THIS TREATY
APPLY, THE GENERAL PROVISIONS OF PARAGRAPH 1 OF ARTICLE 9
SHALL GOVERN AND THE REQUEST SHALL BE EXECUTED UNDER THE LAWS
IN THE REQUESTED STATE.

END QUOTE

QUOTE

3. ANY PERSON WHOSE PRESENCE IS PERMITTED UNDER PARA-
GRAPH 2, OR PERMITTED BY PARAGRAPH 2 OF ARTICLE 9, SHALL HAVE
THE RIGHT, IN ACCORDANCE WITH THE PROCEDURES IN THE REQUESTED
STATE, TO ASK QUESTIONS WHICH ARE NOT IMPROPER UNDER THE LAWS
OF EITHER STATE.

END QUOTE

2. CHANGES TO ARTICLE 12:2 WERE RESULT DIFFICULT NEGOTIATION
WITH AMBASSADOR WEITNAUER. THRUST OF SWISS POINTS WAS SERIOUS
OPPOSITION TO PRESENCE FOREIGN REPRESENTATIVES ON SWISS SOIL.
UNITED STATES TEAM EXPLAINED BASIS FOR NEED FOR PROVISION AND INDICA-
TED IT COULD NOT COMPROMISE BEYOND 2 A AS REDRAFTED. REDRAFT OF
WHOLE OF PARAGRAPH 2 MEETS SWISS NEED TO PRESENT WITH MAXIMUM
OPTICS
PRECISE LIMITS OF PROVISION. JA TEAM IS OF VIEW THAT COMPROMISE,
WHICH MUCH LESS THAN SWISS THOUGHT THEY COULD GET, IS
ACCEPTABLE AND WILL MEET BASIC UNITED STATES NEEDS. IT
THEREFORE RECOMMENDS ACCEPTANCE.

3. PURPOSE OF CHANGE TO ARTICLE 12:3 IS TO MAKE OPTICALLY
CLEAR THAT PROCEDURE USED WILL BE THAT OF REQUESTED STATE--
PARTICULARLY WHEN IT SWITZERLAND. SWISS JUDGES AND CANTONAL
JUDICIAL AUTHORITIES WANTED IT MADE PERFECTLY CLEAR THAT
SWISS PROCEDURES WOULD APPLY. JA TEAM RECOMMENDS ACCEPTANCE.

4. GERMAN TEXT WILL FOLLOW. REQUEST AUTHORIZATION TO INCOR-
PORATE ABOVE CHANGES INTO ENGLISH TEXT.

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*** Current Handling Restrictions *** n/a

*** Current Classification *** LIMITED OFFICIAL USE

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